

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.139 of 2024

Arising Out of PS. Case No.-677 Year-2019 Thana- KAHALGAON District- Bhagalpur

Banti Kumar Yadav @ Banti Yadav, Son of Late Jagdish Kumar Yadav,
Resident of Village- Adarsh Nagar, Fulkiya, P.S.- Ghogha, Dist.- Bhagalpur

... .. Appellant

Versus

- 1. The State of Bihar Patna.
- 2. X

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 280 of 2023

Arising Out of PS. Case No.-677 Year-2019 Thana- KAHALGAON District- Bhagalpur

Nanhku Mandal @ Nandlal Mandal @ Nandlal, Son of Late Halo Mandal @
Haldhar Mandal, Resident of village - Adarsh Nagar Fulkiya, P.S.- Ghogha,
District - Bhagalpur.

... .. Appellant

Versus

- 1. The State of Bihar Patna.
- 2. X

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 139 of 2024)

For the Appellant : Mr. Deepak Kumar Sinha, Advocate
Ms. Sukanya Bharti, Advocate
Mr. Manoj Kumar No. 1, Amicus Curiae

For the Respondent/State : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 280 of 2023)



For the Appellant : Mr. Subhash Kumar, Advocate
Mr. Anil Kumar Singh, Advocate
For the Respondent/State : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 09-12-2025

Heard learned counsel for the appellants, learned *Amicus Curiae* and the learned Additional Public Prosecutor for the State in both the appeals. Despite service of notice upon the informant (Respondent No. 2) she has not entered appearance to oppose the appeal.

2. The present appeal arises out of the judgment of the conviction dated 25.11.2022 (hereinafter referred to as the '*impugned judgment*') and the order of sentence dated 28.11.2022 (in short referred to as the '*impugned order*') passed by the learned Exclusive Special Court (POCSO Act)-cum- 7th Additional District and Sessions Judge, Bhagalpur in connection with POCSO Case No. 141 of 2019 arising out of Kahalgaon P.S. Case No. 677 of 2019.

3. By the impugned judgment the appellants namely Banti Kumar Yadav @ Banti Yadav and Nanhku Mandal @



Nandlal Mandal @ Nandlal have been convicted for the offences under Sections 376 (DA) of the IPC and 5(g), 5(L)/6 of the Protection of Children from Sexual Offences Act, 2012 (in short referred to as the 'POCSO Act') and have been sentenced to undergo rigorous imprisonment for life which shall mean imprisonment for the remainders of natural life and to pay a fine of Rs. 10,000/- (Ten Thousand) each and in default of payment of fine to further undergo simple imprisonment for three months.

4. Prosecution Case:

The prosecution case is based on the fardbeyan of the victim (P.W. 2) recorded on 08.10.2019 at 16:45 hours at Kahalgaon police station. In her fardbeyan, she has stated that her mother has solemnized second marriage with Sanjay Mahaldar of village – Kodwar under Ghogha police station so she was living in the house of Sanjay Mahaldar with her mother. One month back her mother had gone to Amritsar on 05.10.2019 Sanjay Mahaldar had scolded and abused her so she came at Kisan Nagar and she was weeping, from where Bhabhi of Chandan Mandal took her at her house, where she was talking with her mother and her mother had assured that she was returning home. Further she alleged that on 07.10.2019 at the instance of Bhabhi of Chandan Mandal she had gone to visit a fair at Kolapur along with one Rajesh Kumar,



friend of Chandan Mandal at 6:00 P.M., thereafter at about 8:00 P.M. Rajesh returned his house then she was returning to the house of Chandan at Kisan Nagar, she was coming behind another woman and as soon as she reached at Gopalpur Railway crossing, in the meantime, 2 – 3 boys began to tease her, so she went Railway crossing and stayed there in night. Further she has alleged that on 08.10.2019 at about 3:00 A.M. she started to go to the house of Chandan at Kisan Nagar but as soon as she reached near Santa School, in the meantime, Banti Yadav, R/o Kodwar and Nanhku @ Nandlal Mandal, R/o village Adarsh Nagar, Phulakiya both surrounded her and tried to act forcibly with bad intention and when she protested both began to assault her and dragged her in the garden near Santa High School and removed her cloths and committed rape twice one after another and threatened to kill her if she would file a case against them. She has further alleged that she remained in unconscious condition for a long time and when she regained conscious ... she came at police station and gave information. She claimed that her mother was about to reach at Ghogha from Amritsar.

5. On the basis of the aforesaid written application, Kahalgaon P.S. Case No. 677 of 2019 dated 08.10.2019 was



registered under Section 376(G) of the IPC and Section 4 of the POCSO Act.

6. After completion of investigation, the Investigating Officer (I.O.) submitted a charge-sheet vide Charge-sheet No. 165 of 2019 dated 15.12.2019 under Section 376(G) of the IPC and Section 4 of the POCSO Act against both the appellants.

7. On the basis of the police report, cognizance was taken *vide* order dated 05.02.2020 under Section 376(G) of the IPC and Section 4 of the POCSO Act against both the appellants.

8. Thereafter, under Section 207 Cr. P.C. police papers were supplied to the accused persons and after hearing the parties charges under Section 376(G) of the IPC and Section 4 of the POCSO Act were read over and explained to them in Hindi which they pleaded not guilty and claimed to be tried. Thereafter charges were framed on 21.12.2020.

9. In course of trial, the prosecution has examined as many as seven witnesses and exhibited several documents to prove the case.

List of Prosecution Witnesses:

P.W.-1	Radha Devi
P.W.-2	Victim
P.W.-3	Dr. Push Sudha
P.W.-4	Niti Kumari (ASI)
P.W.-5	Uma Prakash Singh (I.O.)



P.W.-6	Deepak Kumar (Assistant Director of FSL, Patna)
P.W.-7	Awanikant Trivedi

List of Exhibits on behalf of the Prosecution:

Ext.-P-1	Fardbeyan
Ext.-P-2	Medical Report
Ext.-P-3	Writing and signature on statement of victim U/s 161 Cr.P.C.
Ext.-P-4	Formal FIR
Ext.-P-5	Seizure List
Ext.-P-6	Writing and signature of I.O. on seizure list
Ext.-P-7	Application/forwarding letter to grant permission to send the cloth of accused and victim to F.S.L. Dept., Govt. of Bihar, Bhagalpur
Ext.-P-8	Charge-sheet
Ext.-P-9	F.S.L. Report

10. After closure of the prosecution evidence, the statement of the accused Banti Kumar Yadav @ Banti Yadav and Nanhku Mandal @ Nandlal Mandal @ Nandlal under Section 313 of the Cr.P.C. was recorded on 17.08.2022.

Findings of the Learned Trial Court:

11. The learned Trial Court has found that the prosecution has been able to establish the case. The prosecution has established the foundation of the allegation made against the accused persons. The statutory presumption creates an exception to



the ordinary rule of presumption of innocence available to an accused in a criminal trial and puts the onus on the accused to rebut such presumption and establish his innocence. The defence has not adduced any defence witness. Even any effective suggestion has not been made negating the case of the prosecution and their own innocence and in that view of the matter the evidence against accused person appears to be believable and strikes the prudence of this court. The trial court did not see any ambiguity in the case of the prosecution. The defence has not been able to prove his innocence beyond reasonable doubt under Section 29 of the POCSO Act. The learned trial court has held that the prosecution has established the foundational fact that accused persons had taken the victim in a garden and had committed penetrative sexual assault one after one with victim and defence has not proved their innocence beyond reasonable doubt under Section 29 of the POCSO Act and has also not proved the mental status under Section 30 of the POCSO Act.

Submissions on behalf of the appellants:

12. Learned counsel for the appellants has submitted that the conviction and sentence imposed upon the appellants by the impugned judgment are illegal, unjust and against the weight of evidence on record. The learned trial court has failed to consider



the fact that the entire prosecution story is false. The learned court has not appreciated the statements of the victim recorded under Sections 161 and 164 of the Cr.P.C. and deposition before the court below which are different from each other and not tallying with the FIR lodged by the victim/informant. The court below has not considered the fact that the victim has deposed that P.W. 1-Mother of the victim is not an eyewitness as on the date of occurrence she was in Amritsar. Doctor Push Sudha (P.W. 3) in her deposition has stated that there was no sign of rape or attempt of rape. Even no spermatozoa was found on the vaginal part of the victim. The court below has not considered the fact that in the entire prosecution story as alleged against the appellants there is no criminal motive which is one of the ingredients of criminal cases. It is submitted that the learned trial court has failed to appreciate that the foundational facts are to be proved by the prosecution beyond all reasonable doubts whereas an accused has a burden to prove his innocence by preponderance of possibilities. Learned counsel relies upon the judgments in *Veerpal @ Titu versus State (CRL.A.223/2023 dated 15th April, 2024)*; *Subrata Biswas and Another versus State* reported in *2019 SCC Online Cal 1815* and *Joy versus State of Kerala* reported in *(2019) 1 KLT 935*.

Submissions on behalf of the State:



13. Learned Additional Public Prosecutor appearing on behalf of the State has submitted that the learned trial court has rightly convicted and sentenced the appellants. It is submitted that there may be minor contradictions in the evidence of the victim but that would not take away the credibility of the victim. He has fully supported the prosecution case.

Consideration:

14. Having heard learned counsel for the appellants, learned *Amicus Curiae* and learned Additional Public Prosecutors for the State as also on perusal of the trial court records, we find that the prosecution case is based on the *fardbeyan* of the prosecutrix ('X'), who has been examined as P.W.-2 in course of trial. In her *fardbeyan*, recorded on 08.10.2019 at 4:45 P.M. at Kahalgaon Police Station by A.S.I, Niti Kumari (P.W. 4), the informant alleged that on 05.10.2019, Sanjay Mahaldar with whom her mother was in living relationship had scolded her and also abused her, whereafter she went to Kisan Nagar and was weeping there. She has stated that in Kisan Nagar, Bhabhi of Chandan Mandal took her to her house where the victim talked to her mother, who was in Amritsar and told her that she was coming. In the meanwhile, on 07.10.2019 at 6:00 P.M., at the instance of Bhabhi of Chandan Mandal, the prosecutrix went to Koalpora to



visit a fair and she had gone with one Rajesh Kumar of Village-Kodwar, P.S.-Ghogha, who happened to be the friend of Chandan Mandal. She has then alleged that at about 8 O'clock in the night, Rajesh returned to his house, whereafter she was coming back to the house of Chandan in Kisan Nagar under P.S.-Ghogha and she was coming behind some other women. It is alleged that as soon as she reached near Gopalpur Railway Crossing, 2 - 3 boys started teasing her, whereafter she went in the Railway Crossing Stop and spent night there. At about 3 O'clock in the morning on 08.10.2019, when she was going to the house of Chandan in Kisan Nagar from the Railway Crossing and reached near the room of Santa School, in the meantime, Banti Yadav and Nanku @ Nandlal Mandal of Village-Adarsh Nagar, Pulakiya under P.S.-Ghogha intercepted her and started pulling her forcibly, they took her in the orchard which was nearby the Santa School, where her clothes were removed forcibly and both of them committed rape on her twice. She has further alleged that they had threatened her that if she would disclose this to anyone, then she would face dire consequences and she would be killed. At this stage, the informant/victim claimed that she remained in unconscious condition for a long time and after regaining consciousness, she came to the Police Station and gave information of the occurrence.



She has also stated in her *fardbeyan* that her mother was in Amritsar and she was likely to reach Ghogha the same day.

15. The *fardbeyan* of the informant/victim has been marked Exhibit-1 at the instance of the A.S.I./Niti Kumari (P.W. 4).

16. From the trial court records, it is further evident that the statement of the victim was recorded under Section 164 Code of Criminal Procedure (*in short the 'Cr.P.C.'*) on 09.10.2019. In her statement, she has stated that she had gone to Koalpura to visit a fair with a neighbour, namely, Rajesh from where both of them returned home at 8:00 P.M. It is further stated that when Banti and Nanhku were holding her, Rajesh fled away, whereafter they brought her near the Railway Patri, she started weeping, on which, they threatened her to cut in pieces and throw in the water. She has stated that Banti torn her clothes and gagged her by mouth, whereafter she was taken to the orchard where Banti opened her pant and committed wrong act with her. She has stated that Nanhku also committed wrong act and, thereafter, both of them took their turn one after another and both of them pushed her into the water and told her to go to her house. They also threatened the victim that she would be cut into pieces and, thereafter, again, she was brought to the orchard where she was asked to touch the



private part of the accused and forcibly made her to touch the same, whereafter they left her. The victim claimed that thereafter she went to the Police Station.

17. It is evident on reading of the *fardbeyan* and the statement under Section 164 Cr.P.C. that the victim (P.W. 2) is not consistent in her statements. While she has stated in her *fardbeyan* that at 8 O'clock in the night, Rajesh had returned home and she was coming behind some other women and was going to the house of Chandan in Kisan Nagar, the 2 - 3 boys started eve teasing her, whereafter she stayed in the night at the Railway Crossing Stop and the occurrence took place on the next day on 08.10.2019 at 3 O'clock in the morning, in her statement under Section 164 Cr.P.C., she has stated that she along with Rajesh (*Hamlog*) had returned home at 8 O'clock in the night and at this stage, she has stated that when Banti and Nanhku were catching hold of her, then Rajesh fled away. Thus as per this statement the accused persons caught hold of her after her return in the night at 8 O'clock, if her statement is to be believed then it is to be taken that the accused persons caught hold of the victim in presence of Rajesh but Rajesh fled away. This is a completely different story developed by the victim only on the next day of recording of her *fardbeyan*.



18. Further, we have noticed that while the victim has stated in her *fardbeyan* that the two accused persons had intercepted her when she reached near the room of Santa School, in her statement under Section 164 Cr.P.C., she has stated that she was caught hold of by Banti and Nanhku while Rajesh fled away and, thereafter, she was brought near the Railway Patri and from there, she was taken to the orchard. This Court further finds that in her *fardbeyan*, the victim has stated that she had remained unconscious for a long time and after regaining consciousness, she came to the Police Station and gave information of the occurrence, but in her statement under Section 164 Cr.P.C., she has not stated so. She has clearly stated that she was pushed into the water and asked by the accused persons to go to her home. She has stated that the accused persons left her, whereafter she had come to the Police Station.

19. In course of trial, the victim (P.W. 2) has come out with a different story. This time, she has not said that she had gone to visit the fair with Rajesh. She is also not disclosing the place or the name of the village where she had gone to visit the fair. She has only stated that on the date of occurrence, she had gone to visit the fair, which is a material contradiction in her own statement made in the *fardbeyan* and under Section 164 Cr.P.C.



There, this witness has stated that she had gone to visit the fair on 07.10.2019 at 8:00 P.M. In course of trial, she has stated that when she was going to visit the fair, then Banti Yadav and Nanhku Mandal came from behind and caught hold of her, whereafter one person asked them as to why they were holding the victim, but it is stated that the accused persons told that person to go his own way, whereafter that person went away. Who was that person is not disclosed by the victim (P.W. 2) in her deposition. This is a third kind of statement given by P.W. 2.

20. The victim, in her further statement, has stated that both the accused persons took her near the orchard by threatening her, whereafter they tied her legs and mouth by clothes and allured her in the pretext of giving clothes and mobile. She has stated that after committing all acts, the accused persons told her not to disclose it to anyone and they would provide her clothes and mobile. She alleged that both the accused had committed rape on her twice. She has stated that Nanhku took name of Banti and asked him to flee away, whereafter she could know the name of both the accused and she could identify the accused persons.

21. In her cross-examination, the victim (P.W. 2) has stated that her mother had come after her statements were made before Police. The defence invited her attention towards her



previous statement that before Police where she had not said that Nanhku asked Banti to flee away and she came to know the name of both the accused. She has stated that the occurrence took place with her between 5 - 6 A.M. and the place from where she was lifted, many people were coming and going, but she did not know anyone. She has stated that she had shown the place of occurrence to Police on the same day in the night hours, but she had not given the cloth by which her legs were tied and the mouth was gagged.

22. In paragraph 7 of her deposition, she (victim/P.W.2) claimed that her cheeks were having abrasion and swellings. The accused persons had badly assaulted her and she had suffered injuries on her legs and mouth. She was slammed down on the Railway Patri, but no treatment of the injuries were given. The defence suggested her that neither any act of rape nor any act of assault had taken place with her and she had falsely implicated the accused persons at the instance of others.

23. The victim (P.W. 2) was examined by the Medical Officer, Sub-Divisional Hospital, Kahalgaon, Bhagalpur on 18.10.2019 at 6:30 P.M. Dr. Pusp Sudha (P.W. 3) has stated that there was no sign of violence in or around vagina, vulva or any internal part of the body. There was no sign of foreign body/foreign discharge and foreign hair present in or around



vagina, vulva or any internal part of the body. According to the radio-logical report of the JLNMC, Bhagalpur, the age of the victim was between 14 -16 years of age. The Doctor (P.W. 3) has clearly opined in the injury report (Exhibit-2) that there was no clinical evidence of rape. In her cross-examination, the Doctor (P.W. 3) has stated that if there is any forceful intercourse, then possibility of injury over the private parts or anybody part is not ruled out. Thus medical evidence completely rules out the evidence of P.W. 2 refer to *Mani Ram and Anr. vs. State of U.P. 1994 Suppl. (2) SCC 289*.

24. Niti Kumari (P.W. 4) has exhibited the statement of the victim recorded under Section 161 Cr.P.C., which has been marked Ext. - P-3.

25. Uma Prakash Singh (P.W. 5) was the Sub-Inspector of Police in Ghogha Police Station on 08.10.2019. He had taken charge of the investigation from the Officer-in-Charge. He has identified his handwriting and signature on the formal F.I.R., which has been marked Ext. - P-4/PW-5. P.W. 5 has stated that after taking over investigation of the case, he had recorded the *fardbeyan* of the victim in the case diary and had recorded the re-statement of the victim and also recorded the statement of her mother. He has stated that he had seized the clothes of the victim



in presence of a female Constable and prepared production-cum-seizure list, which he proved in his handwriting and signature and at his instance it has been marked Ext. - P-5/P.W. 5. He had arrested the accused Nanhku Mandal and also seized his cloth. P.W. 5 has proved the seizure-list said to have been prepared in his handwriting and under his signature, which has been marked Ext. - P-6/P.W. 5. This witness has further stated that he had inspected the place of occurrence and the place of occurrence is a cemented small *Chabutra* near a hand-pump at a distance of 25 yards from the eastern boundary of the Santa High School. This witness has however not stated that in course of inspection of the spot, he had found any incriminating article or noted any incriminating circumstance, suggesting commission of the alleged act. This witness has stated that he had sent the seized clothes for the Forensic Science Laboratory, Bhagalpur and he has proved Ext. - P-7/P.W. 5.

26. In course of cross-examination, P.W. 5 has stated that he visited the place of occurrence on 09.10.2019 at 4:00 P.M., but he had not recorded the time in the case diary. This statement of P.W. 5 does not tally with the statement of victim (P.W. 2), who has stated that on the same day in the night, she had shown the place of occurrence to the I.O. This witness (P.W. 5) had not



recorded the statement of the father of the victim, namely, Rajendra Mandal. He has stated that the mother of the victim was kept as a concubine by Sanjay Mahaldar. He had not recorded the statement of Sanjay Mahaldar because he did not meet. In paragraph 19, P.W. 5 has stated that he had not recorded the statement of Chandan and Rajesh. In paragraph 20, he has stated that the victim did not disclose him that she had come from another village and was living in another village.

27. At this stage, we have noticed that even though P.W. 5 is said to have prepared the seizure-list of the clothes of the victim and accused/Nankhu Mandal, it appears from the trial court records that the seizure-lists (Ext. - P-5 & Ext. - P-6) were not filed in the court with the First Information Report. The order-sheets of the trial court nowhere shows that either the seized clothes or the seizure-lists were produced in the court, even as the seizure-lists are shown to have been prepared on 08.10.2019 itself. We have also noticed that on these two seizure-lists, there is no endorsement of the learned Magistrate in the right hand side at the top of the documents, which clearly suggest that those two seizure-lists were for the first time produced in course of trial. We have noticed that for the first time on 03.12.2019, an application was filed by the I.O. (P.W. 5) with a request to the learned trial court to



allow him to send the seized clothes to the Forensic Science Laboratory, Bhagalpur, but even at this stage, the seizure-lists were not filed in the court as there is neither any such averment in the order of the learned trial court nor the seizure-lists, which are exhibits in trial, bear any signature or endorsement showing the date of filing of the same in the trial court.

28. On 03.12.2019, for the first time, the court was approached for sending the seized clothes, which was permitted, but then the seized clothes reached the F.S.L. through a *Chaukidar* (not examined) on 10.12.2019.

29. Two F.S.L. reports, which are Ext. - P-9 and P-9/1 are available on the record. Ext. 9 has been marked at the instance of Deepak Kumar, who happened to be the Assistant Director of Regional Forensic Science Laboratory, Bhagalpur. He is P.W. 6 in this case. In his cross-examination, he has stated that the *Lungi* cutting was having blood, but the grouping could not be decided because there was no Antigen present on it. This *Lungi* cutting was of the accused/Nanhku. No Antigen was there on the *Lungi* and P.W. 6 has clearly stated that the Semen or Antigen, which were found on the clothes of the victim could not be matched and he could not say that whose Semen or Antigen were found.



30. Similarly, Awanikant Trivedi (P.W. 7), who has proved Ext. P-9/1/P.W. 7, has stated that he got the exhibits on 10.12.2019 and he cannot say that whose blood was there on the clothes. This can only be seen by the people doing the serology.

31. We, therefore, find that not only the seizure of the clothes of the victim and the accused/Nanhku as shown in seizure-lists (Exts. - 5 and 6) are highly doubtful, the F.S.L. reports, which are Exts. - 9 and 9/1 respectively, lead nowhere.

32. We refer to the judgment of Hon'ble Supreme Court in the case of **Krishan Kumar Malik Vs. State of Haryana**, reported in **(2011) 7 SCC 130**, wherein it has been held as under:

paragraph -4

“43. With regard to the matching of the semen, we find it from Taylor's Principles and Practice of Medical Jurisprudence, 2nd Edn. (1965) as under:

“Spermatozoa may retain vitality (or free motion) in the body of a woman for a long period, and movement should always be looked for in wet specimens. The actual time that spermatozoa may remain alive after ejaculation cannot be precisely defined, but is usually a matter of hours. Seymour claimed to have seen movement in a fluid as much as 5 days old. The detection of dead spermatozoa in stains may be made at long periods after emission, when the fluid has been allowed to dry. Sharpe found identifiable spermatozoa often after 12 months and once after a period of 5 years. Non- motile spermatozoa were



found in the vagina after a lapse of time which must have been 3 and could have been 4 months.”

Had such a procedure been adopted by the prosecution, then it would have been a foolproof case for it and against the appellant.

44. Now, after the incorporation of Section 53-A in the Criminal Procedure Code w.e.f. 23-6-2006, brought to our notice by the learned counsel for the respondent State, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provision in CrPC the prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but they did not do so, thus they must face the consequences.”

33. In this case though accused/Nanhku was arrested on the same day, *i.e.*, 08.10.2019, as stated by the I.O. (P.W. 5), but he has not been medically examined to find out any evidence with regard to the alleged act of penetrative sexual act with the victim.

34. This Court finds that the whole prosecution case is based upon the statement of the victim (P.W. 2), who cannot be put in the category of sterling witness. Who can be said to be the sterling witness has been observed by the Hon’ble Supreme Court in the case of ***Rai Sandeep @ Deepu Vs. State of NCT of Delhi***,



reported in *(2012) 8 SCC 21*. Paragraph 22 from the said judgment is being reproduced hereinbelow for ready reference:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of



the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, it can be held that such a witness can be called as a “sterling witness” whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

35. It is evident that the medical examination of the victim (P.W. 2) completely ruled out any penetrative sexual act.

36. One more thing which is evident from the record is that the injury report is showing the date of medical examination of the victim as 18.10.2019, whereas the victim (P.W. 2) has stated in her deposition that her medical examination was conducted next day in the morning. If the statement of the victim is believed then her medical examination was conducted on 08.10.2019 itself, but when Dr. Pusp Sudha (P.W. 3) was examined, once again, she has stated that she had examined the victim on 18.10.2019 at 6:30 P.M. and the same is in consonance with her statement in the injury report (Ext. - 2).



37. In course of trial, learned Public Prosecutor nowhere drew the attention of the learned trial court if there was any typographical error with regard to the date of medical examination. Therefore, the injury report (Ext. - 2), showing the date of medical examination as 18.10.2019 would raise a further issue with regard to the statement of the victim that she was medically examined on the very next day in the morning.

38. Be that as it may, in the kind of evidences available on the record, we are of the considered opinion that the prosecution has not been able to prove beyond all reasonable doubts the basic foundations of the case as required to attract the presumptions under Sections 29 and 30 of the POCSO Act. On the other hand, the accused persons have been able to raise sufficient doubts with regard to the prosecution story on the anvil of preponderance of possibilities.

39. In our considered opinion, it would not be safe to sustain the conviction of the appellants on the basis of the evidences available on the record.

40. We, accordingly, set aside the impugned judgment and order and acquit the appellants of all the charges, giving them the benefit of doubt.

41. The appeals stand allowed.



42. The appellants are in custody; therefore, they are directed to be released forthwith, if their custody is not required in any other matter.

43. Let the trial court records and a copy of this judgment be sent immediately to the trial court and the concerned Jail authority for information and needful compliance.

44. Mr. Manoj Kumar No. 1, learned *Amicus Curiae* shall be paid an honorarium of Rs. 15,000/- for assisting this Court in the absence of learned counsel for the appellant/Banti Kumar Yadav in Cr. Appeal (DB) No. 139 of 2024 as also today.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

krishna/Praveen-II

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.12.2025
Transmission Date	12.12.2025

